

A BILL

To respond to a medicare funding warning.

*Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE; REFERENCES; PURPOSE OF LEGISLATION.

(a) SHORT TITLE.—This Act may be cited as the "Medicare Funding Warning Response
Act of 2008".

(b) REFERENCES.—In this Act:

(1) Except where otherwise specifically provided, references in this Act shall be
considered to be made to the Social Security Act, or to a section or other provision
thereof.

(2) The term "Secretary" shall be deemed a reference to the Secretary of Health
and Human Services.

(3) The terms "Medicare" and "Medicare program" mean the program under title
XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) The Medicare Prescription Drug, Improvement, and Modernization Act of
2003 (P.L. 108-173) shall be referred to as the "MMA".

(5) The term "excess general revenue medicare funding" has the meaning given
such term by section 801(c) of the MMA.

(6) The term "Trustees Report" means the annual report submitted under
subsection (b)(2) of sections 1817 and 1841 of the Social Security Act (42 U.S.C.
1395i(b)(2) and 1395t(b)(2), respectively).

(c) PURPOSE.—It is the purpose of this Act to respond to the medicare funding warning

1 currently in effect under section 801(a)(2) of the MMA.

2 **TITLE I—INTRODUCING PRINCIPLES OF VALUE-BASED HEALTH CARE INTO**

3 **THE MEDICARE PROGRAM**

4 **SEC. 101. INTRODUCING PRINCIPLES OF VALUE-BASED HEALTH CARE**

5 **INTO THE MEDICARE PROGRAM.**

6 (a) ELECTRONIC HEALTH RECORDS.—The Secretary shall develop and implement a
7 system for encouraging nationwide adoption and use of interoperable electronic health records
8 and to make available personal health records for Medicare beneficiaries.

9 (b) PRICING TRANSPARENCY.—The Secretary shall make publicly available information
10 on prices and payments under the Medicare program for treatments (including episodes of care),
11 items, and services to assist Medicare beneficiaries in making choices among providers, plans,
12 and treatment options.

13 (c) QUALITY TRANSPARENCY.—The Secretary shall make publicly available information
14 on the quality of care provided to Medicare beneficiaries to assist them in making choices among
15 providers, plans, and treatments. To ensure the continued development and evolution of quality
16 measures, the Secretary shall develop and implement a plan for ensuring that, by the year 2013,
17 quality measures are available and reported with respect to at least 50 percent of the care
18 provided under the Medicare program (determined according to the amount of payment made
19 under such program for items and services with respect to which such measures are available).
20 The Secretary shall report to the Committees on Ways and Means and Energy and Commerce in
21 the House of Representatives and the Committee on Finance in the Senate annually on the
22 progress of the goal specified in the preceding sentence.

23 (d) INCENTIVES FOR VALUE.—

1 (1) INCENTIVES FOR PROVIDERS AND SUPPLIERS.—

2 (A) IN GENERAL.—The Secretary shall design and implement a system for
3 use in the Medicare program under which a portion of the payments that would
4 otherwise be made under such program to some or all classes of individuals and
5 entities furnishing items or services to beneficiaries of such program would be
6 based on the quality and efficiency of their performance.

7 (B) IMPLEMENTATION.—The Secretary shall first implement such system
8 in settings where measures are well-accepted and already collected, including
9 hospitals, physicians' offices, home health agencies, skilled nursing facilities, and
10 renal dialysis facilities. The initial focus of such efforts shall be on quality, but
11 the Secretary shall add measures of efficiency as they are identified. The system
12 shall also include incentives for reducing unwarranted geographic variations in
13 quality and efficiency.

14 (C) SECRETARY'S AUTHORITY.—The Secretary may implement the system
15 described in this paragraph without regard to any provision of title XVIII of the
16 Social Security Act that would, in the absence of subparagraphs (A) and (B),
17 apply with respect to payment to an individual or entity furnishing items or
18 services for which payment may be made under the Medicare program.

19 (2) BENEFICIARY INCENTIVES.—

20 (A) IN GENERAL.—The Secretary shall implement incentives for Medicare
21 beneficiaries to use more efficient providers and preventive services known to
22 reduce costs.

23 (B) ACCESS TO HEALTH SAVINGS ACCOUNTS.—The Secretary shall assure

1 a transition into the Medicare program for individuals who are not yet enrolled in
2 such program who own health savings accounts, and shall provide for the
3 availability of high deductible health plan options in the Medicare program.

4 (e) BROADLY TRANSFORMING THE PRIVATE HEALTH CARE MARKETPLACE.—The
5 Secretary shall use and release Medicare data for quality improvement, performance
6 measurement, public reporting, and treatment-related purposes. In implementing the preceding
7 sentence, the Secretary shall apply risk adjustment techniques where appropriate and shall
8 determine the circumstances under which it is appropriate to release such data.

9 (f) PROTECTING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—In implementing
10 this title, the Secretary shall ensure that individually identifiable beneficiary health information is
11 protected (in accordance with the regulations adopted under section 264(c) of the Health
12 Insurance Portability and Accountability Act of 1996 and such other laws and regulations as may
13 apply).

14 (g) REGULATIONS.—The Secretary may implement a system described in this section by
15 regulation, but only if such regulation is issued after public notice and an opportunity for public
16 comment.

17 (h) DEFINITIONS.—As used in this section:

18 (1) The term "efficiency" means the delivery of health care in a manner that
19 reduces the costs of providing care for Medicare beneficiaries while maintaining or
20 improving the quality of such care.

21 (2) The term "information on quality of care" means such measures of—

22 (A) the use of clinical processes and structures known to improve care,

23 (B) health outcomes, and

(C) patient perceptions of their care,
as the Secretary may select with preference given to those measures that have
been recognized through a consensus-based process.

(i) SAVINGS REQUIREMENT.—

(1) IN GENERAL.—The Secretary may implement the provisions of subsections (a)
through (e) of section 101 and section 102 for a year only to the extent that the Secretary
determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services
certifies) that—

(A) the total amount of payment made under title XVIII of the Social
Security Act over the five and ten year periods that begin with January 1 of such
year as a result of the implementation of such subsections (a) through (e) and
section 102 is less than the amount that would have been made over such periods
if such implementation had not occurred; and

(B) the total amount of payment made under each of titles XIX and XXI of
such Act over such periods as a result of such implementation is no greater than
the amount that would have been made under each such title over such periods if
such implementation had not occurred.

(2) AVAILABILITY OF APPROPRIATIONS.—The Secretary shall carry out the
provisions of this section subject to the availability of appropriations and to the extent
permitted consistent with paragraph (1).

SEC. 102. RELEASE OF PHYSICIAN PERFORMANCE MEASUREMENTS.

Section 1848(k) (42 U.S.C. 1395w-4(k)) is amended by adding at the end the following
new paragraph:

"(9) RELEASE OF QUALITY MEASUREMENTS.—

"(A) IN GENERAL.—Notwithstanding section 552a of title 5, United States Code, the Secretary may—

"(i) release to the public physician-specific measurements of the quality or efficiency of physician performance against a standard (reflecting measurements that have been recognized through a consensus-based process) that has been endorsed by the Secretary; and

"(ii) release, to an entity that will generate or calculate such measurements, data that the entity may use to perform such task.

"(B) ENDORSEMENT OF STANDARDS.—The Secretary may make an endorsement under subparagraph (A) by publication of a notice in the Federal Register."

TITLE II—REDUCING THE EXCESSIVE BURDEN THE LIABILITY SYSTEM PLACES ON THE HEALTH CARE DELIVERY SYSTEM

SEC. 201. SHORT TITLE.

This title may be cited as the "Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2008".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and

1 the meaning of section 7703 of the Internal Revenue Code of
2 1986) but does not file a joint return for such year, and

3 "(bb) does not live apart from such individual's spouse at
4 all times during the taxable year,

5 subclause (I) shall be applied by reducing each of the dollar amounts
6 otherwise applicable under such subclause for the calendar year by the
7 threshold amount for such year applicable to an unmarried individual.

8 "(D) DETERMINATION BY COMMISSIONER OF SOCIAL SECURITY.—The
9 Commissioner of Social Security shall have the authority to make initial and
10 reconsideration determinations necessary to carry out the income-related
11 reduction in premium subsidy under this paragraph.

12 "(E) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this
13 paragraph, the term 'modified adjusted gross income' has the meaning given such
14 term in subparagraph (A) of section 1839(i)(4), determined for the taxable year
15 applicable under subparagraphs (B) and (C) of such section.

16 "(F) JOINT RETURN DEFINED.—For purposes of this paragraph, the term
17 'joint return' has the meaning given to such term by section 7701(a)(38) of the
18 Internal Revenue Code of 1986.

19 "(G) PROCEDURES TO ASSURE CORRECT INCOME-RELATED REDUCTION IN
20 PREMIUM SUBSIDY.—

21 "(i) DISCLOSURE OF BASE BENEFICIARY PREMIUM.—Not later than
22 September 15 of each year beginning with 2008, the Secretary shall
23 disclose to the Commissioner of Social Security the amount of the base

beneficiary premium (as computed under paragraph (2)) for the purpose of carrying out the income-related reduction in premium subsidy under this paragraph with respect to the following year.

"(ii) ADDITIONAL DISCLOSURE.—Not later than October 15 of each year beginning with 2008, the Secretary shall disclose to the Commissioner of Social Security the following information for the purpose of carrying out the income-related reduction in premium subsidy under this paragraph with respect to the following year:

"(I) The monthly adjustment amount specified in subparagraph (C).

"(II) Any other information the Commissioner of Social Security determines necessary to carry out the income-related reduction in premium subsidy under this paragraph.

"(H) RULE OF CONSTRUCTION.—The formula used to determine the monthly adjustment amount specified under subparagraph (C) shall only be used for the purpose of determining such monthly adjustment amount under such subparagraph."

(2) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—Section 1860D-13(c) (42 U.S.C. 1395w-113(c)) is amended—

(A) in paragraph (1), by striking "(2) and (3)" and inserting "(2), (3), and (4)"; and

(B) by adding at the end the following new paragraph:

"(4) COLLECTION OF MONTHLY ADJUSTMENT AMOUNT.—

"(A) IN GENERAL.—Notwithstanding any provision of this subsection or section 1854(d)(2), subject to subparagraph (B), the amount of the income-related reduction in premium subsidy for an individual for a month (as determined under subsection (a)(7)) shall be paid through withholding from benefit payments in the manner provided under section 1840.

"(B) AGREEMENTS.—In the case where the monthly benefit payments of an individual that are withheld under subparagraph (A) are insufficient to pay the amount described in such subparagraph, the Commissioner of Social Security shall enter into agreements with the Secretary, the Director of the Office of Personnel Management, and the Railroad Retirement Board as necessary in order to allow other agencies to collect the amount described in subparagraph (A) that was not withheld under such subparagraph."

(b) CONFORMING AMENDMENTS.—

(1) MEDICARE.—Part D of title XVIII (42 U.S.C. 1395w-101 et seq.) is amended—

(A) in section 1860D-13(a)(1)—

(i) by redesignating subparagraph (F) as subparagraph (G);

(ii) in subparagraph (G), as redesignated by subparagraph (A), by striking "(D) and (E)" and inserting "(D), (E), and (F)"; and

(iii) by inserting after subparagraph (E) the following new subparagraph:

"(F) INCREASE BASED ON INCOME.—The monthly beneficiary premium shall be increased pursuant to paragraph (7)."; and

(B) in section 1860D-15(a)(1)(B), by striking "paragraph (1)(B)" and inserting "paragraphs (1)(B) and (1)(F)".

(2) INTERNAL REVENUE CODE.—Section 6103(l)(20) of the Internal Revenue Code of 1986 (relating to disclosure of return information to carry out Medicare part B premium subsidy adjustment) is amended—

(A) in the heading, by striking "PART B PREMIUM SUBSIDY ADJUSTMENT" and inserting "PARTS B AND D PREMIUM SUBSIDY ADJUSTMENTS";

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting "or 1860D-13(a)(7)" after "1839(i)"; and

(ii) in clause (vii), by inserting after "subsection (i) of such section" the following: "or under section 1860D-13(a)(7) of such Act"; and

(C) in subparagraph (B)—

(i) by inserting "or such section 1860D-13(a)(7)" before the period at the end;

(ii) as amended by clause (i), by adding at the end the following new sentence: "Such return information may be disclosed to officers and employees of the Departments of Health and Human Services and Justice, to the extent necessary, and solely for their use, in any administrative or judicial proceeding ensuing from an adjustment to any such premium."; and

(D) by adding at the end the following new subparagraph:

1 "(C) TIMING OF DISCLOSURE.—Return information shall be
2 disclosed to officers, employees, and contractors of the Social Security
3 Administration under subparagraph (A):

4 "(i) for taxpayers currently entitled to benefits under title II
5 of the Social Security Act, or as qualified railroad retirement
6 beneficiaries within the meaning of section 7(d) of the Railroad
7 Retirement Act of 1974, within 4 months preceding the month in
8 which the taxpayer first becomes entitled to benefits under part A
9 or is eligible to enroll in part B or part D of title XVIII of the
10 Social Security Act; and

11 "(ii) for taxpayers not currently receiving benefits under
12 title II of the Social Security Act, or as qualified railroad retirement
13 beneficiaries within the meaning of section 7(d) of the Railroad
14 Retirement Act of 1974, or who have participated in Medicare
15 qualified government employment as defined in section 210(p) of
16 the Social Security Act, after the taxpayer applies for a benefit
17 under part A or part B and is eligible to enroll in part D of title
18 XVIII of the Social Security Act."

19 (c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary, in
20 consultation with the Commissioner of Social Security may implement this section, and the
21 amendments made by this section, by program instruction or otherwise.